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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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**AUG 4 1995**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**In the Matter of**

**Deferral of Licensing of MTA  
Commercial Broadband PCS**

**GN Docket No. 93-253  
ET Docket No. 92-100**

**To: The Commission**

**DOCKET FILE COPY ORIGINAL**

**MOTION FOR LEAVE TO FILE  
SUPPLEMENT TO APPLICATION FOR REVIEW**

The National Association of Black Owned Broadcasters, Inc. ("NABOB"), Percy E. Sutton, individually ("Sutton") and the National Association for the Advancement of Colored People, Washington Bureau ("NAACP") (collectively referred to herein as the "Minority Petitioners"), by their attorneys, move the Commission for leave to file the attached Supplement to Application for Review, stating as follows:

On July 21, 1995, the Minority Petitioners filed an Application for Review of the Order issued June 23, 1995 (the "June 23, 1995 Order") by the Chief, Wireless Telecommunications Bureau (the "Bureau Chief") in the above-captioned proceeding denying the Minority Petitioners' Application for Review filed on May 12, 1995. In their July 21, 1995 Application for Review, the Minority Petitioners argued, among other things, that the commencement of the C block auction, then scheduled for August 29, 1995, could be expected to suffer further delays and that the delay of the commencement of the C block auction coupled with the immediate issuance of licenseS to the A and B block winners would cause irreparable injury to C block auction bidders and winners in general and to the Minority Petitioners in particular.

Subsequent to July 21, 1995, two events, neither of which could have been known to or anticipated by the Minority Petitioners, have occurred which are directly relevant to the issues raised in the July 21, 1995 Application for Review. First, on July 27, 1995, the Commission indefinitely suspended the commencement of the C block auction after the United States Court of Appeals for the District of Columbia Circuit stayed those portions of the Implementation of Section 309(j) of the


Communications Act -- Competitive Bidding, Sixth Report and Order, FCC 95-301, released July 18, 1995, allowing applicants to utilize the 49 percent equity exception. Omnipoint Corp. v. FCC, No. 95-1374 (July 27, 1995). Second, the Commission has made a statement to the United States Court of Appeals for the D.C. Circuit on July 25, 1995 and the Chairman of the Commission, Reed E. Hundt, has made a public statement on July 27, 1995 regarding the competitive injury which will be suffered by C block auction bidders and winners as a result of latest delay in the commencement of the C block auction coupled with the issuance of licenses to A and B block winners. In his July 27, 1995 public statement, Chairman Hundt also made a prediction that the stay would delay the commencement of the C block auction by six months.

The attached Supplement to Application for Review brings these new facts and occurrences to the Commission's attention and discusses the impact of these new facts and occurrences on the Commission's consideration of the July 21 Application for Review. Consideration of these new facts and circumstances which occurred subsequent to the July 21, 1995 filing of the Minority Petitioners' Application for Review is in the public interest.

WHEREFORE, NABOB, Sutton and the NAACP respectfully move that their Motion for Leave to File Supplement to Application for Review be granted and that the attached Supplement to Application for Review be accepted for filing.

Respectfully submitted,

**THE NATIONAL ASSOCIATION OF  
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August 4, 1995

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of**

**Deferral of Licensing of MTA  
Commercial Broadband PCS**

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**To: The Commission**

**SUPPLEMENT TO APPLICATION FOR REVIEW**

The National Association of Black Owned Broadcasters, Inc. ("NABOB"), Percy E. Sutton, individually ("Sutton") and the National Association for the Advancement of Colored People, Washington Bureau ("NAACP") (collectively referred to herein as the "Minority Petitioners"), by their attorneys, hereby file this Supplement to Application for Review, stating as follows:

On July 21, 1995, the Minority Petitioners filed an Application for Review (the "July 21, 1995 Application for Review") of the Order issued June 23, 1995 (the "June 23, 1995 Order") by the Chief, Wireless Telecommunications Bureau (the "Bureau Chief") in the above-captioned proceeding denying the Minority Petitioners' Application for Review filed on May 12, 1995 (the "May 12, 1995 Application for Review"). In the July 21, 1995 Application for Review, the Minority Petitioners argued, among other things, that the commencement of the C block auction, then scheduled for August 29, 1995, could be expected to suffer further delays and that the delay of the commencement of the C block auction coupled with the immediate issuance of licenses by the Commission to the A and B block winners would cause irreparable injury to C block auction bidders and winners in general and to the Minority Petitioners in particular.

Subsequent to July 21, 1995, two events, neither of which could have been known to or anticipated by the Minority Petitioners, have occurred which are directly relevant to the issues raised in the July 21, 1995 Application for Review. First, on July 27, 1995, the Commission indefinitely suspended the commencement of the C block auction. Second, on July 25, 1995, the Commission made a statement to the United States Court of Appeals for the District of Columbia Circuit and on

July 27, 1995 the Chairman of the Commission, Reed E. Hundt, made a public statement regarding the competitive injury which will be suffered by C block auction bidders and winners as a result of the latest delay in the commencement of the C block auction coupled with the issuance of licenses to A and B block winners. In his July 27, 1995 public statement, Chairman Hundt also predicted that the stay would delay the start of the C block auction by six months.

The instant Supplement to Application for Review brings these new facts and circumstances to the Commission's attention and discusses the impact of these new facts and circumstances on the Commission's consideration of the July 21, 1995 Application for Review. Consideration of these new facts and circumstances which occurred subsequent to the filing of the Minority Petitioners' July 21, 1995 Application for Review clearly is in the public interest.

In the July 21, 1995 Application for Review, the Minority Petitioners recounted the history of the schedule for the commencement of the C block auction, including the numerous delays in the scheduled start of the auction. The July 21, 1995 Application for Review pointed out that the May 12, 1995 Application for Review, which was denied by the June 23, 1995 Order, had asserted that it was unlikely that the C block auction would actually begin on August 2, 1995 -- the day then set for the start of this auction. The July 21, 1995 Application for Review pointed out that this prediction had come true on July 18, 1995 when the Commission delayed the commencement of the C block auction until August 29, 1995. The July 21, 1995 Application for Review asserted that "[t]he history of this proceeding strongly suggests that there will be additional delays before the auction actually commences." July 21, 1995 Application for Review at 6.

On July 27, 1995, this prediction also came true. On that date, the United States Court of Appeals for the District of Columbia Circuit issued an order in Omnipoint Corp. v. FCC, No. 95-1374 (D.C. Cir. July 27, 1995) ("Omnipoint"), which stayed those portions of the Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Sixth Report and Order, FCC 95-301, released July 18, 1995, allowing all applicants to utilize the 49 percent equity exception. Also on July 27, 1995, and in response to the stay order of the D.C. Circuit, the Commission issued

a Public Notice indefinitely postponing the July 28, 1995 deadline for filing the FCC Form 175 (short-form) for the C block PCS auction -- and hence indefinitely postponing the start of the C block auction itself. In a June 27, 1995 Statement regarding the D.C. Circuit's stay of the C block auction in the Omnipoint case, which accompanied the Commission's July 27, 1995 Public Notice indefinitely postponing the start of the C block auction, Commission Chairman Reed E. Hundt stated that this latest delay in the start of the C block auction "will likely delay the auction for at least six months."

This further indefinite delay in the C block auction underscores the irreparable injury identified by the July 21, 1995 Application for Review caused by the tremendous head start that the winners of the A and B block auctions will have over the C-block winners if the Commission issues licenses to the winners of the A and B PCS blocks well in advance of the date that the C block winners will be granted their licenses. The longer the time period between the date the A and B block licenses are issued and the date the C block licenses are issued, the greater and more profound this irreparable injury will become. A delay of an additional six months in the start of the C block auction -- the delay predicted by Chairman Hundt -- would put the start of the C block auction off until on or about March 1, 1996!

The June 23, 1995 Order claimed that any injury caused by the delay of the C block auction coupled with the early issuance of licenses to the A and B block auction winners was "speculative." However, statements made by Chairman Hundt and the Commission itself subsequent to July 21, 1995 contradict the June 23, 1995 Order's claim that such injury is "speculative." In its July 25, 1995 Opposition to Emergency Motion for Stay and Emergency Motion for Administrative Stay in Omnipoint Corp. v. FCC, No. 95-1374, the Commission made the following statement about the irreparable injury which will result if the C block auction were delayed beyond August 29, 1995 while the issuance of licenses to the A and B block winners continued on its current schedule:

[A]s the Commission has pointed out repeatedly in this proceeding, early licensing in the C block is essential to give the licensees an optimal chance to compete in the personal communication service market. Sixth R&O at ¶¶ 6, 8. The C block

licensees already will be entering the market years behind the cellular competitors, and months behind A and B block licensees. Thus, the C block winners will be the fifth wireless competitor -- behind two cellular operators and the much larger A and B block winners -- in most markets. Any further delay as a result of a stay [of the C block auction] inevitably would put the C block winners "at a greater disadvantage" vis-a-vis existing wireless service providers. Id. Indeed, such further delay ultimately might foreclose completely the opportunities of some C block licensees to break into this competitive market.

Federal Communications Commission's Opposition to Emergency Motion for Stay and Emergency Motion for Administrative Stay, Omnipoint Corp. v. FCC, No. 95-1374 (Filed July 25, 1995) at p.18 (emphasis added). If the head start given to the A and B block auction winners were increased by the six months predicted by Chairman Hundt, the ability of C block licensees to compete would be virtually, if not completely, destroyed.

Chairman Hundt made reference to the competitive impact of a six month delay in the start of the C block auction in his July 27, 1995 Statement: "The court-imposed delay will hurt competition, cost consumers and threaten the opportunities of small businesses in the Personal Communications Services." Those "small businesses" are the future C block bidders and licensees.

Thus, in its July 25, 1995 pleading in the Omnipoint case, the Commission has conceded that any increase in the head start given to A and B block winners would put the C block winners "at a greater disadvantage" vis-a-vis existing wireless service providers -- including the A and B block auction winners -- and indeed "might foreclose completely the opportunities of some C block licensees to break into this competitive market." In addition, Chairman Hundt has admitted that "small businesses" in the PCS industry -- the C block licensees -- will be injured by this further delay in the C block auctions. This is exactly the kind of irreparable injury which the Minority Petitioners have asserted in their July 21, 1995 Application for Review will occur if the Commission proceeds to issue the A and B block licenses well in advance of the time that the C block licenses will be issued. And it is exactly the kind of injury that the June 23, 1995 Order which is the subject of the July 21, 1995 Application for Review claimed was "speculative."

When the latest serious delay in the start of the C block auction is considered in light of a)

the July 25, 1995 statement of the Commission and and the July 27, 1995 statement of Chairman Hundt with regard to the competitive injury which will be created by the head start the Commission is giving the A and B block winners over the eventual C block winners, b) the factors set forth in the Minority Petitioners' July 21, 1995 Application for Review and c) the mandates of Section 309(j) of the Communications Act, the correct course of action for the Commission becomes clear. The Commission must grant the July 21, 1995 Application for Review and stay the issuance of the A and B block licenses until the C block licenses can be issued. Any other course of conduct will be a refusal by the Commission to uphold its statutory obligations under Section 309(j) of the Communications Act and a conscious decision by the Commission to doom the C block licenses to a competitive disaster in the PCS marketplace.

WHEREFORE, NABOB, Sutton and the NAACP respectfully move that the Commission grant the July 21, 1995 Application for Review, reverse the June 23, 1995 Order, and stay the issuance of licenses for the A and B block broadband PCS frequencies until the Commission is also ready to license the C block frequencies.

Respectfully submitted,

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Dated: August 4, 1995

**CERTIFICATE OF SERVICE**

I, Rena I. Curtis, a secretary at the law firm of Rubin, Winston, Diercks, Harris & Cooke do hereby certify that a copy of the attached **MOTION FOR LEAVE TO FILE SUPPLEMENT TO APPLICATION FOR REVIEW AND SUPPLEMENT TO APPLICATION FOR REVIEW** were served this 4th day of August, 1995 to the following persons by first class mail, postage prepaid:

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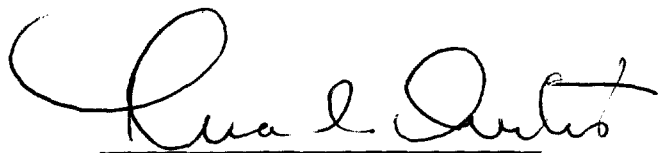
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